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Attorneys for Defendant and Counterclaimant,
 BLOCKBUSTER INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation,

Plaintiff,

v.

BLOCKBUSTER, INC., a Delaware
 corporation,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. C 06 2361 WHA (JCS)

**DECLARATION OF WILLIAM J.
 O'BRIEN IN SUPPORT OF
 BLOCKBUSTER'S MOTION FOR
 SUMMARY JUDGMENT OF
 INVALIDITY AND NON-
 INFRINGEMENT**

Hearing Date: August 2, 2007
 Time: 8:00 A.M.
 Courtroom: 9, 19th Floor

Complaint Filed: April 4, 2006
 Trial Date: September 17, 2007

PUBLICLY REDACTED VERSION

1 I, William J. O'Brien, declare:

2 1. I am an attorney duly admitted to practice before this Court and the courts of the
3 State of California, and am a partner in Bingham McCutchen, LLP, Counsel for Defendant and
4 Counterclaimant Blockbuster. This declaration is submitted in support of Blockbuster's Motion
5 for Summary Judgment of Invalidity and Non-Infringement. If called as a witness I would and
6 could testify to the following:

7 2. Attached as Exhibit A is a true and correct copy of U.S. Patent No. 6,584,450,
8 issued by the U.S. Patent and Trademark Office on June 24, 2003.

9 3. Attached as Exhibit B is a true and correct copy of excerpts from U.S. Patent No.
10 7,024,381, issued by the U.S. Patent and Trademark Office on April 4, 2006.

11 4. Attached as Exhibit C is a true and correct copy of excerpts from the May 4,
12 2007, Expert Report of Jason Salzetti of Deloitte Consulting LLP.

13 5. Attached as Exhibit D is a true and correct copy of excerpts from Volumes I and
14 II of the deposition transcript of Reed Hastings, taken on April 2-3, 2007. I was present at Mr.
15 Hastings's deposition, and the excerpts accurately represent the proceedings.

16 6. Attached as Exhibit E is a true and correct copy of excerpts from Volumes I and II
17 of the deposition transcript of Neil Hunt, taken on March 23, 2007 and April 27, 2007. I was
18 present at Mr. Hunt's deposition, and the excerpts accurately represent the proceedings.

19 **[PORTIONS OF THIS EXHIBIT HAVE BEEN FILED UNDER SEAL]**

20 7. Attached as Exhibit F is a true and correct copy of documents produced by Netflix
21 in this litigation with Serial Numbers NFLIX0210910-13 showing the netflix.com web page as
22 of Sunday, January 17, 1999.

23 8. Attached as Exhibit G is a true and correct copy of a Home Film Festival web
24 page as of November 6, 1996, that was produced by Blockbuster in this litigation with Serial
25 Numbers BB01318581-86.

26 9. Attached as Exhibit H is a true and correct copy of a web page produced by
27 Blockbuster in this litigation with Serial Numbers BB01318683-89, entitled "The Enneagram

Movie & Video Store.”

10. Attached as Exhibit I is a true and correct copy of documents produced by Netflix in this litigation with Serial Numbers NFLIX0001905-07, entitled “*Circulating Libraries and Video Rental Stores*,” by Richard Roehl & Hal R. Varian, University of California, Berkeley, and University of Michigan, Dearborn, December 1996.

11. Attached as Exhibit J is a true and correct copy of excerpts from the deposition transcript of Linda Verin, taken on April 5, 2007. As set forth in the Declaration of Tony Chen filed concurrently, Mr. Chen was present at Ms. Verin’s deposition, and the excerpts accurately represent the proceedings.

12. Attached as Exhibit K is a true and correct copy of excerpts from the deposition transcript of Tom Adams, taken on June 1, 2007. I was present at Mr. Adams’ deposition, and the excerpts accurately represent the proceedings. **[THIS EXHIBIT HAS BEEN FILED UNDER SEAL]**

13. Attached as Exhibit L is a true and correct copy of a newspaper advertisement from The West Side Spirit regarding Cine Club video, dated December 23, 1985, and produced by Blockbuster in this litigation with Serial Number BB00013030. *See* Federal Rule of Evidence 902(6).

14. Attached as Exhibit M is a true and correct copy of a set of newspaper articles from Changing Times dated October 1985, produced by Blockbuster in this litigation with Serial Number BB00004581. *See* Federal Rule of Evidence 902(6).

15. Attached as Exhibit N is a true and correct copy of a “Regional Reports - Central Region” from *Video Store* magazine, dated January 1985 and produced by Blockbuster in this litigation with Serial Number BB00012976. *See* Federal Rule of Evidence 902(6).

16. Attached as Exhibit O is a true and correct copy of an advertisement for PopCard from *The Oklahoman* newspaper, dated April 2, 1982, and produced by Blockbuster in this litigation with Serial Number BB00013052. *See* Federal Rule of Evidence 902(6).

17. Attached as Exhibit P is a true and correct copy of excerpts from the deposition

1 transcript of Mark Ramm, taken on March 23, 2007. As set forth in the Declaration of Tony
2 Chen filed concurrently, Mr. Chen was present at Mr. Ramm's deposition and the excerpts
3 accurately represent the proceedings.

4 18. Attached as Exhibit Q is a true and correct copy of excerpts from a document
5 produced by Blockbuster in this litigation beginning with Serial Number BB00008174 entitled
6 *Automated Circulation Systems in Libraries Serving the Blind and Physically Handicapped: A*
7 *Reference Guide for Planning*, prepared by Cuadra Associates, Inc. under contract to the
8 National Library Service for the Blind and Physically Handicapped, Library of Congress, dated
9 May 15, 1981.

10 19. Attached as Exhibit R is a true and correct copy of excerpts from a European
11 Patent Application, naming Yoshida as inventor, published as Publication Number 0 286 130 A2,
12 on August 4, 1988, produced by Blockbuster in this litigation beginning with Serial Number
13 BB00579584.

14 20. Attached as Exhibit S is a true and correct copy of excerpts from the deposition
15 transcript of Shane Evangelist taken on April 17, 2007. I was present at Mr. Evangelist's
16 deposition and the excerpts accurately represent the proceedings. **[THIS EXHIBIT HAS**
17 **BEEN FILED UNDER SEAL]**

18 21. Attached as Exhibit T is a true and correct copy of excerpts from the deposition
19 transcript of Haim Mendelson taken on June 5, 2007. I was present at Mr. Mendelson's
20 deposition and the excerpts accurately represent the proceedings.

21 22. Attached as Exhibit U is a true and correct copy of documents regarding Tape
22 Rental Library, Inc. that were marked as Exhibit 41 at the deposition of Mr. Ramm on March 23,
23 2007.

24 23. Attached as Exhibit V is a true and correct copy of excerpts from the Random
25 House Dictionary of the English Language, 2nd Edition, Unabridged.

26 24. Attached as Exhibit W is a true and correct copy of documents regarding Tape
27 Rental Library, Inc. that were marked as Exhibit 25 at the deposition of Mr. Ramm on March 23,
28

1 2007.

2 I declare under penalty of perjury that the foregoing is true and correct. Executed this
3 14th day of June, 2007 in Santa Monica, California.

4
5
6 /s/
William J. O'Brien